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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,732	02/25/2004	James E. Haley	40030-10087	2743
21788	7590	12/08/2010		
RYNDAK & SURI LLP 200 W. MADISON STREET SUITE 2100 CHICAGO, IL 60606			EXAMINER CARTAGENA, MELVIN A	
			ART UNIT 3754	PAPER NUMBER
			MAIL DATE 12/08/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/786,732

**Applicant(s)**

HALEY, JAMES E.

**Examiner**

Melvin A. Cartagena

**Art Unit**

3754

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 September 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5, 7 and 9-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7, 10-25 and 28-31 is/are rejected.
- 7) ☒ Claim(s) 9, 26 and 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 14-17 and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It appears that the integrally attached cap claimed in claim 14, lines 1 and 2 is a double inclusion of the cap claimed in claim 1, line 25.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 5, 7, 10-25 and 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,637,530 to Jiang in view of US 5,228,603 to Pham et al.

Jiang shows a pouring device as seen in Figs. 1 and 2, for use with a bottle 10 and having a cylindrical body 4 with lower portion with a resilient annular groove 9 extending into the container's neck to affix the pouring device to the container, see Figs. 1 and 4B, an upper portion 3 with a circular cross section and a height of about 0.75 in., a plurality of pour openings defined by an upper part of the body and dividers 5a and 5b which have a cross section of about 0.04 inches, an air passage 8 with a portion being integrally formed with and coextensive with the

pouring device, a visual indicator 6 and V-shaped spout 2 with a slope of about 50 degrees and extending about 0.1 inches.

Jiang lacks a filter material and an insertable cap molded with the pouring device and having a cylindrical extent and joined to the device by a strand. Pham show a spout with a filter material 76 and a cap 152 made of the same material as the spout where the cap is attached to the spout by a flexible strand 312 at about 120 degrees from the spout 305 and has a cylindrical extent 160, see Fig. 8. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Jiang to include a filter made of the same material as the spout, a stand and a cylindrical extent as taught by Pham to facilitate manufacture of the spout by making the spout and the filter in one molding process, having a stand to prevent miss placing the cap and a cylindrical extent to completely seal the spout to the atmosphere.

***Allowable Subject Matter***

5. Claims 9, 26 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

6. Applicant's arguments filed September 27, 2010 have been fully considered but they are not persuasive. In response to applicant's argument that references of Jiang and Pham do not shows an air passage encircled by the pouring apertures, both the device of Jiang and Pham show vent openings 8 and 48 within a the perimeter defined by the respective upper portions of the spouts and next to the pouring openings in the same manner as disclosed by the applicant in Figs. 3, 5 and 6.

In response to applicant's argument that references of Pham does not shows a cap closing an air passage and a pouring passage in the same embodiment, all the features disclosed in the device of Pham can be found in any combination in the multiple embodiments disclosed by Pham, see column 6, lines 67-68, column 7, lines 11-11 and lines 31-32. The closure cap enclosed both the air and pouring openings.

In response to applicant's argument that the cylindrical extent in the closure of Pham would not seal properly if placed in the device of Jiang because it would interfere with element 6, there is no need to have any specialized profile to seal the spout of Jiang, if the cylindrical sealing element extends axially beyond the element 6 to seal bellow it with in the upper section 3.

7. In response to applicant's argument that the references fail to show specific dimensional relationship between the cap and the length and the thickness of attaching strap, it is noted that these features are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (571) 272-4924. The examiner can normally be reached on M-TH (8:30AM to 7:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kenneth Bomberg/  
Primary Examiner, Art Unit 3754

/M. A. C./  
Examiner, Art Unit 3754

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